POLICY PROPOSAL

COMPENSATION FOR DISABLEMENTS ARISING FROM WORKPLACE STRESSORS

The Workers' Compensation Board invites submissions regarding this policy proposal.

Submissions should be mailed to:

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Submissions must be received by February 4, 1991

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April 20, 1990

POLICY PROPOSAL

COMPENSATION FOR DISABLEMENTS ARISING FROM WORKPLACE STRESSORS

I. BACKGROUND

1. An overview of the history of the issue

In recent years, stressors in the workplace have come to be recognized as factors which may affect workers' health. In light of this recognition, the Board has reviewed its practices relating to compensation for disabilities arising from workplace stressors.

To assist in this review, the Board prepared a detailed discussion paper. The paper considered the scientific literature on workplace stressors, the potential role of psychiatric evidence in claims adjudication, the practices of other Canadian and U.S. jurisdictions, and the various legal tests being used to adjudicate workplace stressor claims. The paper was distributed for external consultation in February, 1989.

A report summarizing the responses from external consultation was considered at the Board of Directors' meeting on June 2, 1989. At the meeting, the Board of Directors requested that another paper be prepared, outlining some options for the compensation of disabilities resulting from workplace stressors. This options paper, based on an analysis of the earlier discussion paper and the submissions received in response to it, was distributed for external consultation in July, 1989. A four-month timeframe was set for this second phase of consultation. A total of 33 submissions were received in response to the options paper.

The final phase in the policy process is consideration of a policy proposal on this issue. This paper reviews the key issues that have been identified throughout the policy development process and presents a recommendation for the future direction of compensation for disablements arising from workplace stressors.

2. Discussion paper "Compensation for Chronic Occupational Stress" (January 30, 1989)

(a) Summary

The discussion paper suggested that before meaningful discussion can occur, consideration must first be given to establishment of standard definitions of the relevant terms. The paper established that the term "stressor" is used to refer to a causal factor and that the outcome is referred to as a "stressor-related disability". There was an effort to avoid the use of the term "stress" which, because it is so varyingly used, easily confusing rather than clarifying discussion.

Largely based on the research of Cary L. Cooper, one of the most prolific

and respected researchers in occupational stress, the paper proposed an interactive model of workplace stressors that recognizes the interaction among work-related and non-work-related factors and the individual's capacity to moderate the influence of those factors.

The paper reviewed the scientific literature respecting the identification of factors that are generally accepted as being workplace stressors. These factors, similar to the factors identified in Appeals Tribunal Decision No. 918, include: machine pacing of work; monotonous work; and, lack of control over work (particularly under conditions of high responsibility). The paper referred to models of "occupational stress" developed by leading authors who distinguish between intrinsic stressors, (those that are inherent to the task itself) and extrinsic stressors, (those that are part of the task context). Examples of the former include time pressure combined with responsibility and constant attention. Examples of the latter include role ambiguity and the organisational structure.

The paper also considered the popular view of "high stressor" occupations. Based on research and submissions from experts in the field, it is demonstrated that stereotypes in the popular literature that rank jobs according to stressor level are unfounded. It is further stated that rather than specific jobs being inherently more "stressor-ful" than others, it may be the "fit" between the individual and the job that is more critical to the negative impact of workplace stressors.

The discussion paper reviewed Appeals Tribunal Decision No.918 in detail. This discussion led to a description and analysis of seven legal tests commonly used in U.S. jurisdictions.

The paper raised other issues. One of these was whether claims related to workplace stressors that are described as personnel decisions should be considered for compensation. Also, concern about a worker's right to privacy was raised given the potential investigation of a worker's personal life in claims of this nature.

(b) Summary of external consultation

Eighty-eight submissions were received in response to the discussion paper. Responses were generally framed within six key subject clusters. These are briefly summarized below.

The first subject, whether there is statutory authority for workplace stressor claims, received a mixed response. Many respondents suggested that, on an intuitive basis, workers' compensation was not designed for these kinds of cases. Many others, however, suggested that these kinds of claims could be considered as disablements under s.1(1)(a)(iii) of the Workers' Compensation Act.

As for the legal test that should be applied, great concern was expressed about any test that attempts to determine the relative influence of workplace and non-workplace factors on disabilities that are multifactorial in origin. Doubt was expressed about the ability to

identify relative influences when undoubtedly many factors are involved. The recommended legal tests reflected varying degrees of confidence in the ability of the Board to make a determination, rather than strictly the law that governs these situations. The suggested tests covered a broad range, including that workplace stressor claims are: never compensable; compensable only when the stressor is unusual; and, compensable even when based on a worker's subjective perception of workplace events.

Another key subject was the use that adjudicators should make of the scientific literature. The comments that were made in the submissions included that: the inconclusiveness of the literature limits its usefulness in decision making; the Industrial Disease Standards Panel (IDSP) should be required to evaluate the literature and; each case should be decided on its own merits irrespective of the literature.

Many respondents, particularly employers, suggested that psychiatric evidence should be used extensively in the adjudicative process. It was also suggested that expert panels or adjudicative units should review all of these cases. Other respondents highlighted the unreliability of expert evidence and cast doubt on the ability of psychiatry to pinpoint causation.

Employers and medical experts generally agreed that the personal life of a worker must be examined in detail regardless of the nature of the stressor. Others expressed grave concern about such a requirement. It was noted that such investigations would not be popular with workers, might be considered intrusive and that some physicians might be reluctant to provide such personal information.

The issue of whether personnel decisions should be considered as a relevant workplace stressors was controversial. One perspective focused on the view that personnel decisions constitute an integral part of the usual working environment for all workers and accordingly should not be considered. Another perspective, citing the same fact, reached the opposing conclusion that these should, therefore, be considered as relevant factors.

3. Options paper "Compensability of disabilities resulting from workplace stressors" (July 14, 1989)

(a) Summary

Building on the earlier discussion paper and the submissions received in response to it, the options paper reviewed the threshold question of whether disabilities related to gradual exposure to workplace stressors are compensable under the Act. It concluded that these cases could be considered as "disablements" under the Act.

Summarizing the state of current scientific literature and professional views about that literature, the paper suggested that while the volume of research is large and there are aspects of the workplace that are generally considered to be stressors, there are few research studies that demonstrate cause and effect. Therefore, it is concluded that while the

literature may provide some general parameters about workplace stressors, claims for compensation would have to be considered on an individual basis.

The options paper considered how, in a particular case, disability may be established. It suggested that a diagnosis according to DSM-III-R which would establish a psychiatric disability may be required. Then, after a psychiatric disability has been established, there must then be evidence that establishes work-relatedness. Under this heading fall two issues: the quality of evidence of exposure to workplace stressors (usual/unusual stressors); and, the amount of contribution that the workplace made to the disability (predominant/significant contribution).

The paper also raised the issue of the potential negative effect on health of compensating for the effect of workplace stressors. As noted in the external consultation, there is concern that compensating workplace stressors may in fact engender further ill health and invalidism.

The paper concluded with four options for consideration based on the issues of the quality of the evidence and the amount of contribution the workplace made to the disability.

(b) Summary of external consultation

A consultation report summarizing the 33 submissions received in response to the options paper is attached to this paper as Appendix A. This report provides excerpts from each submission and highlights the variety of perspectives among all consultation participants about key issues.

Issues addressed in most submissions were the statutory authority to consider workplace stressor claims and how to establish work-relatedness. In terms of the former question, the majority of respondents stated that there is legal authority to consider workplace stressor claims under s.1(1)(a)(iii) of the Act. While labour representatives were unanimous in this view, there was less consensus among employers. Nonetheless most employers recognized statutory authority to consider these claims.

The question of establishing work-relatedness where it is likely that more than one factor has influenced the development of a disability was more difficult. While some employers suggested that this task was so formidable that no policy should be implemented, other employers recommended the requirement for an unusual workplace stressor to have made a predominant contribution to the disability. Labour representatives suggested that work-relatedness could be established using the following model: if there is evidence that a worker was exposed to a generally acknowledged workplace stressor and there is evidence of a disability, then work-relatedness is established. This model contrasts employers' perspective that essential to any method of establishing work-relatedness is consideration of a worker's non-work-related stressors.

As stated earlier, the options paper considered the quality of evidence based on the categorization of workplace stressors as usual or unusual. It was noted that this would require a comparison group to determine when

a stressor should be considered as un/usual. The paper further suggested that co-workers with the same employer may be the only feasible comparison group. Labour submissions highlighted concern that this definition of usual may be unfair to some occupational groups, for example emergency workers, who are regularly exposed to workplace events that may be considered to be unusual for the average worker but, because of their regular frequency, are considered to be usual stressors for this particular group.

For a comprehensive report on consultation respecting the options paper, Appendix A should be read in its entirety.

II. DISCUSSION

1. Statutory authority

The threshold question is whether a disablement arising from workplace stressors is a personal injury by accident so as to give rise to a right to benefits under s.3 of the Act. It has been concluded that these claims could be considered to be "disablements" arising out of and in the course of employment under the definition of "accident" in s.1(1)(a)(iii) given that:

- there is nothing in the Act to suggest that personal injury can only be physical in nature, and
- the definition of accident (disablement) is sufficiently broad to include a condition that emerges gradually.

While there may be agreement that workers can develop mental illnesses from factors in the workplace that are not physical, and further that such disabilities should be considered for compensation, there is a general misunderstanding regarding what "arising out of and in the course of employment" actually means to the determination of work-relatedness in a particular case. The meaning of "arising out of" within a general context is addressed in a separate WCB discussion paper titled "Work-relatedness in the Ontario workers' compensation system" (April 1990). The application of the general rule to the specific case of workplace stressor claims is the focus of the following discussion.

2. Legal tests and usual/unusual stressors

Workplace stressors are generally considered to fall within one of the following three categories:

- sudden and unusual workplace events,
- ongoing and unusual workplace events, and;
- ongoing and usual workplace conditions.

Many of the legal tests that are used in American jurisdictions reflect some consideration of these categories of workplace stressors. In fact, in many jurisdictions where workplace stressor claims are recognized as

compensable, these categories form the basis of the legal test that is adopted.

In some states, as in current practice in many Canadian jurisdictions including Ontario, the workplace stressor must be a sudden, shocking and life threatening event to be considered for compensation. This test is based on the recognition that a sudden, shocking and life threatening workplace event may lead to psychiatric disability even though no physical injury has been sustained.

Other states require that the workplace stressor be considered unusual, whether a sudden event or continuing workplace condition. Unusual is considered within the context of everyday life or employment life. This approach is based on the recognition that while the workplace stressor need not be sudden or traumatic, there must be some method of separating work-related from non-work-related disabilities. Thus the workplace event or condition must be of a greater dimension than 'the day-to-day emotional strain and tension which the average worker must experience.'

Another group of states pays benefits in claims in which the workplace stressor is described as the usual conditions of employment life. This legal test is based on the view that there should be no difference, in any respect, between the adjudication of physical and psychological claims.

Throughout the policy development process, Board administrators have considered the applicability of this usual/unusual categorization of workplace stressors. Particularly in view of the consultation submissions from labour and employers, it has become apparent that this conceptualization of workplace stressors may provide little to advance the establishment of work-relatedness in a particular claim. As employers note, for example, even though there is evidence of an unusual stressor at work, investigation may reveal that nonetheless it was a non-work-related factor that led to the development of the disability. Alternatively, labour representatives note that usual workplace events may lead to the development of a disability despite the existence of personal stressors. From both perspectives, a policy based on the usual/unusual nature of the workplace stressor would be unsatisfactory.

An alternative approach is to compare the employment activity or condition to the activities and conditions of everyday life. If they are the same, there is no feature of the <u>employment</u> that makes it different from the ordinary stressors and strains of everyday life. The development of a disability at work was only coincidental, and the disability is attributable to the worker's everyday life and not to the employment situation. If the employment provides exposure to stressors greater than those in everyday life, any disability that emerges and that can be related medically to the employment, will be attributable to the employment and not to the risks that the average person runs all the time. This is the foundation of Larson's approach to the definition of "arising out of" employment.

3. Predominant/significant contribution

As stated earlier, the options paper suggested that to address the difficulty in establishing work-relatedness in claims where the cause of the disability is implicitly multifactorial, the requisite amount of contribution of the workplace to the disability may be increased. That is, where the workplace stressor is said to be unusual, a significant contribution is required. However, where the disability is said to arise from usual workplace stressors, a predominant contribution is required. From a policy perspective this approach has two principal problems: it is unclear whether there is statutory authority to require a predominant contribution under any circumstances; and, there is no consensus respecting the definition of predominant and significant contribution.

As noted in the April 1990 discussion paper on work-relatedness in the Ontario workers' compensation system, the significant contribution test permits decision-makers to evaluate the evidence provided and decide when the role of reported factors or events is of sufficient importance to be considered as the causal connection to the workplace. Similarly, a significant contribution test provides a decision-maker with the necessary scope to determine that the magnitude of a reported factor or event that at first blush may seem unlikely to have led to a disability is, in fact, a significant causal connection to the workplace.

On the first point, it should be noted that the alternate approach outlined in the previous section (that is, a requirement of stressors of greater dimension at work than in non-work) is not a requirement of predominant contribution of the work. Rather, it is a requirement that the risk of disablement from workplace stressors be greater than the risk of disablement from stressors of everyday life.

4. Appeals Tribunal Decisions

Appeals Tribunal Panels have stated that workplace stressor claims are compensable under the Act as disablements, and have also recognized the challenges in establishing work-relatedness in workplace stressor claims. The landmark decision that first clearly identified these issues was Decision No.918. The Panel in Decision No.918 stated the following:

> It seems to us that, in stress cases, there will inevitably be a number of concurrent non-work-related influences that could be contributing to the disability. In those circumstances, it is inherently very hard to be confident about a judgement as to whether the work factors were significant, or of sufficient importance to be classified as significant. Accordingly, in stress-related mental disability cases, the evidence concerning the role of the workplace injuring process in the development of the disability, in our view, must be especially clear.

To address this issue the Panel suggested that different standards of contribution must be met depending on the nature of the stressor. That is, where the workplace stressor is identified as being usual, then the

workplace must have made a predominant contribution to the disability. Because the case being heard was not considered within the context of unusual stressors, the Panel did not explicitly address the amount of contribution under these circumstances. However there is a suggestion that where the workplace stressor is considered to be unusual, then a significant workplace contribution would be required.

Decision No.1018/87 considered whether a worker's disability constituted personal injury by accident arising out of and in the course of employment. Referring to Decision No.918, the Panel in this case stated that this earlier decision should not be taken as far as creating a higher standard for some types of cases than others. The Panel endorsed the "significant contribution" standard as appropriate regardless of the nature of the workplace stressor.

In Decision No.536/89 the Panel accepted the Maine Townsend test as an appropriate one and stated that this test requires that a disabling condition exist and that the condition result from a work-related factor. In this case the Panel distinguished between a "true psychological disturbance" which would establish a disabling condition, and anger and frustration which would not.

Decision No.780/89 agreed with the analysis in Decision No.1018/87 that a higher test or a "predominance" test is unwarranted in workplace stressor cases. In cases of a psychiatric disability arising from workplace stressors, this Panel suggested that there must be evidence that:

- a disability exists that disables a worker from performing the functions of the job

- the disability is work-related which would require an evaluation of workplace stressors including whether these are usual/unusual, expected/unexpected, and

- the workplace contributed significantly to the development of the disability which would require a comparison of the personal situation of a worker and the workplace stressors.

In this case the stressor, lay-off from employment, was considered to be usual at this workplace since lay-offs had been occurring on a regular basis. The Panel stated that in these kinds of cases they would also have to consider whether a worker over-reacted or misinterpreted an employer's actions before establishing the existence of a workplace stressor.

Decision No.145/89 is the first workplace stressor case heard in which a worker's disablement was determined to be work-related. In this case the Panel followed an approach similar to that in Decision No.780/89 as outlined above. In discussing whether the workplace contributed significantly to the development of the worker's disability, the Panel compared the fact situation in this case to the facts of other decisions where the determination of work-relatedness had been complicated by personal stressors. In this case there were no notable stressors in the worker's non-work life.

The Panel examined the level of stressors at the workplace and considered the relative roles of work and non-work stressors. It was noted that:

> This worker's stresses were, in our view, not only greater than those of everyday life and employment, but also, because of the particular conditions of his employment, greater than those of his co-workers.

The Panel further stated that:

> In summary, a disability existed which disabled the worker from performing the functions of his job, this disability was work-related, and the work place contributed significantly to the development of this disability. Accordingly, the worker is entitled to compensation...

5. Professor Larson's approach

Discussing the issue of a gradual stimulus causing a "nervous injury", Professor Larson stated the following in Workmen's Compensation §42.23(b):

> Wisconsin has produced the most straightforward example of this correct way of drawing the line, in Swiss Colony v. Dept. of ILHR. ...After the hearing examiners had entered an award, the Supreme Court announced the rule in School District v. ILHR Dept. that "in order for nontraumatically caused mental injury to be compensable in a workmen's compensation case, the injury must have resulted from a situation of greater dimensions than the day-to-day mental stress and tensions which all employees must experience."

This test has now been made part of the Wisconsin workers' compensation law.

This approach mediates between the perspectives generally expressed by employers and labour representatives. Labour representatives state that if a worker was exposed to stressors in the work environment and there is a disability, then work-relatedness will have been established. Employers state that any exposure to stressors in a worker's personal life may provide evidence of non-work-relatedness. Larson endorses this Wisconsin approach which avoids both polarities by requiring that the workplace stressor pose a greater risk of disablement than that run by the average worker. The risk analysis is accomplished by requiring that workplace stressors be greater than the day-to-day stressors which all workers must confront.

6. Proposed approach

Within the Canadian context, the Ontario Board is at the frontier of

policy development for workplace stressor claims. While some aspects of the adjudicative process can be resolved with relative certainty, other aspects present a greater challenge. Establishing that a disability exists may be accomplished with some certainty. Establishing the nature of workplace and non-workplace stressors can also be accomplished with some certainty. The critical issue is how to establish work-relatedness where there is great uncertainty, both from a medical and adjudicative perspective, about the relative contribution of potentially many factors to the development of a disability.

Based on the work of Professor Larson, the proposed policy identifies that there are two requirements that must be met to establish work-relatedness: legal causation and medical causation.

- Legal causation

  The employment will be found to have made a legally significant contribution to the injury:

  - where non-work-related stressors may have contributed in some way to the development of the disability, but the employment involved a level of stressors that was greater than that experienced in the non-employment life of the average person.

  To determine the level of stressors both at the worker's workplace and the level faced by the average worker, a decision-maker will consider objective evidence about the nature, duration and intensity of the stressors. With this evidence a decision-maker will be able to establish whether the legal test has been met.

  There will be cases in which a decision-maker will be unable to consider the workplace stressors with non-employment stressors because no comparable event or condition exists in non-employment life. For example, when a worker identifies a personnel action as the relevant workplace stressor, there will be no comparable stressor in non-work life. In these instances a decision-maker will consider the intensity and duration of the worker's workplace stressor in relation to the intensity and duration of such stressors faced by the average worker.

  It is important that a decision-maker recognize that when a comparison is required, it is the types of stressors that are to be compared not the particular stressor. For example, if the stressor is generally described as lack of control and specifically described as detailed monitoring of production, the comparison is between lack of control in work and non-work life. A decision-maker would not compare the monitoring of a worker's production at work and when not at work.

- Medical causation

  The employment will be found to have made a medically significant contribution to the injury if:

  - there is a plausible connection between the disability and the workplace stressors; and

- it is as likely as not that the disability would not have developed within the timeframe that it did if the workplace stressors had not contributed.

7. Evidence of disability

To implement this proposed policy, decisions-makers will have to evaluate the evidence about the disability that is provided to them. While a decision-maker will rely on a physician's diagnosis and consider his/her opinion respecting whether the workplace was a significant factor in the development of the disability, the determination of work-relatedness rests with the decision-maker.

A decision-maker's first task is to establish that a worker has a disability. A diagnosis of a psychiatric disorder in accordance with generally accepted psychiatric terminology is preferred, and would be the most persuasive evidence for a decision-maker to receive. For example, a diagnosis according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (in 1990, the most current version is DSM-III-R) would meet this standard.

Other jurisdictions impose a similar requirement. For example, Oregon incorporated into legislation the requirement that there must be a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community. California established a committee to develop guidelines for improving the handling of psychiatric claims. Its recommendations were incorporated into the California administrative regulations. One component of the new regulations is that the disability must be defined in terms of DSM-III-R.

Based on current Board experience with psychotraumatic disabilities, nine diagnostic categories on Axis I of DSM-III-R are most likely to arise in workplace stressor claims. These are:

- Mood disorders (296.2, 296.3, 300.40)
- Anxiety disorders (309.89, 300.02, 300.30, 300.21, 300.01, 300.27)
- Somatoform disorders (300.20, 300.11, 300.70)
- Adjustment disorders (309.24, 309.00, 309.28, 309.82)
- Dissociative disorders (300.13, 300.12, 300.60)
- Psychological factors affecting physical condition (316.00)
- Sleep disorders (307.42)
- Sexual disorders (302.71)

Highlighted in external consultation and stated in the cautionary notes of DSM-III-R, the intent of this classification text is for treatment and

research, not to determine causation. Thus a diagnosis in and of itself will not address the work-relatedness question but will provide evidence of the existence of disability.

This method of establishing disability has been selected for many reasons. Firstly, to provide certainty that a worker has a disability, and not merely complaints of symptoms that are at a subclinical level, a generally recognized diagnosis is required. Additionally, a worker must present a clinical picture of sufficient severity to warrant a diagnosis of a psychiatric disorder. Without this requirement, individuals who are upset or angered by a workplace event, although not actually disabled from working, could be eligible for compensation.

Since generic terms such as "emotional exhaustion" or "stress" in themselves do not necessarily denote a disability, these will not be sufficient to establish a compensable condition. Also, these terms are too vague diagnostically to allow the generalizations about the nature and degree of the individual's disability that are required to establish a comprehensive clinical picture and consistency in decision-making among claims. Generally evidence from psychiatrists will be preferred although this would not preclude detailed evidence of the worker's mental disorder submitted by any other qualified physician.

8. Financial implications

Predicting the financial implications of the policy proposed in this paper is problematic from many perspectives. Most importantly, there is no baseline of the number of workplace stressor claims in Ontario. Claims of this nature are not generally submitted because it is widely known that under current policy they are not eligible for compensation. In the instances where claims are submitted, there is no quantification of those that are denied by the Board.

Additionally, there is no information about the likely benefit, treatment and administrative costs of workplace stressor claims in Ontario. Although it is evident that treatment programs will increase costs, it is also anticipated that treatment programs will reduce the duration, and hence benefit costs, of workplace stressor claims. The extent to which these two factors will offset each other in terms of costs is unknown.

Using the number and disposition of workplace stressor cases heard at the Appeals Tribunal as a benchmark for estimating volume and costs is not particularly instructive. While the number of workplace stressor cases heard at the Appeals Tribunal is small, and to date the number of accepted cases is one, it cannot be surmised that this is a reflection of the number of claims that would be submitted or accepted if a policy recognizing these claims were in place.

During the consultation on the options paper, the Employers' Council on Workers' Compensation submitted a cost study prepared by William M. Mercer Ltd. dated November, 1989 and titled "Cost Evaluation of Chronic Occupational Stress Claims for the Employers' Council on Workers' Compensation". The basis of the report is the mental health statistics

published by Statistics Canada for 1982-1984 which provide the number of cases receiving treatment for mental disorders in psychiatric and general hospitals in Ontario. However, as the authors state, it is impossible to know the degree that workplace stressors caused these mental disorders. Perhaps the report is best summarized by the authors comment that "Any estimate of the cost impact is quite speculative at this point."

Other jurisdictions that allow workplace stressor claims, both Canadian and American, were contacted to determine the number of workplace stressor claims registered and accepted and the costs associated with these claims. While most jurisdictions do not collect information in a manner that enables the provision of this information, Oregon and California do gather detailed statistics.

The statistics collected by the workers' compensation system in Oregon revealed the following:

NUMBER OF CLAIMS

- During 1980-1986, 2,569 disabling mental stress claims were set up
- During 1980-1986, 71% had been denied and 746 had been accepted
- Number of stress claims accepted in 1985 - 132
- Number of disabling claims accepted in 1985 - 38,808
- **Percentage of stress claims accepted to total claims accepted in 1985 was 0.340%**

COST PER CLAIM

- Average medical costs for stress claims closed in 1985 - $2,943
- Average time loss costs " " " " " " - $8,201
- Average permanent partial dis. costs stress claims closed in 1985 - $1,220
- **Average total cost of an accepted disabling stress claim first closed in 1985 - $12,364 or 2.7 times the average for all claims**

OVERALL COSTS

- Average costs for 132 accepted stress claims in 1985 - $1,632,048 (132 X $12,364)
- Total benefits paid in 1985 for all claims - $406,611,000

The number of mental stress claims in California is reported as follows:

Year	Mental Stress Injuries	% of Total Injuries
1980	1,282	0.3
1981	1,844	0.5
1982	2,644	0.8
1983	3,785	1.1
1984	4,236	1.1
1985	5,380	N/A
1986	6,812	1.7
1987	7,838	2.0
1988	9,368	2.1

However, California's method of data collection may lead to an underestimation of the incidence of mental stress claims. According to a comprehensive research study completed by the California Workers' Compensation Institute (CWCI) that will be published in the near future, the statistics provided by the state agency significantly under report the number of mental-mental claims. For 1987 and 1988, the CWCI estimates that the actual number of mental-mental claims was 29,140 and 34,760 respectively. In 1987, the average cost of a resolved mental stress claims was $7,450. The average cost of other indemnity cases was $10,500.

Great caution must be exercised when using the statistics from these two jurisdictions to project costs in Ontario in view of the differences in their approach to compensation. For example, the duration and quantum of benefits in these jurisdictions is different from Ontario. The legal standard for the workplace stressor policy in these two states is that workplace stressor claims may be compensable where the source of the stressor is not unusual, that is, not in excess of the stressors of everyday life or employment. Additionally, in Oregon the basis for acceptance of these claims is as an occupational disease, and it is unknown whether such a difference could render a comparison of costs and number of claims misleading.

To assist in the estimation of the financial implications of a workplace stressor policy data was obtained from the National Council on Compensation Insurance (NCCI) in New York concerning the average cost and duration of mental-mental stress claims. The NCCI information that was received is compiled from ten states: Florida, Hawaii, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Oregon, and Pennsylvania:

Mean summary statistics, 1980-1988	Stress Claims	Average Physical Disability Claim
Average incurred indemnity costs	$10,875.58	$4,063.59
Average incurred medical costs	$ 2,064.67	$2,165.10
Average claim duration	66.73 days	29.30 days

These statistics suggest that while the average medical costs of a stress claim are comparable to a physical disability claim, the average indemnity costs are more than double the average physical disability claim costs. The duration of workplace stressor claims are also more than double the duration of average physical disability claims.

In the compensation literature there are frequent references to the high costs of workplace stressor claims. For example an article in "Workers' Compensation Monthly", Vol.10, No.4, December 1989, also based on NCCI statistics, stated that:

> The stress claims explosion is a myth according to the National Council on Compensation Insurance (NCCI). Despite all the talk of "crisis" the NCCI estimates that stress accounts for only .1% of all workers' compensation claims. The NCCI considers only the mental-mental cases

to be actual "stress" claims. Stress claims are twice as likely to involve women and cost twice as much ($15,000 to $20,000) as the average workers' compensation claim.

The Director of NCCI, contacted subsequent to the publication of this article, indicated that it is based on immature data. Further, the cost estimates cited in this article include litigation costs which would not be a factor within the Ontario context. More credibility was given to the NCCI statistics cited earlier. However, this compilation of statistical information represents data collection in jurisdictions that have very different legal standards for allowing workplace stressor claims. For example, Illinois requires that the workplace stressor be a sudden, frightening or shocking event whereas Pennsylvania requires that the workplace stressor be unusual in that it is in excess of the stressors of everyday life or employment.

While it is understandable that the financial implications of any proposed policy are of great concern, particularly to employers, a reliable projection of costs is extremely difficult, if not impossible.

III CONSULTATION

This policy proposal will be circulated for consultation to the External Consultation Group, to those who made written submissions respecting the options paper, and to any interested parties who request it. A meeting of the External Consultation Group will be convened to discuss the proposal. The deadline for written submissions respecting the policy proposal is February 4, 1991.

APPENDIX A

CONSULTATION REPORT

"COMPENSABILITY OF DISABILITIES RESULTING FROM WORKPLACE STRESSORS"

Operational Policy Branch
April 12, 1990

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CONSULTATION REPORT RESPECTING THE OPTIONS PAPER

"COMPENSABILITY OF DISABILITIES RESULTING FROM WORKPLACE STRESSORS"

I INTRODUCTION

As part of the policy review of compensation for disablements arising from workplace stressors, an options paper was circulated in July, 1989 for consultation with Board stakeholders. At the completion of the four month consultation period, thirty-three submissions had been received respecting the issues and options raised in the paper. An alphabetical list of participants in consultation is attached as Appendix B.

This consultation report is intended to provide a summary of the views that were expressed during the consultation process. It begins by providing a brief overview of the responses to key issues. Then, to provide a flavour of the actual comments made by consultation participants, excerpts from written submissions are presented according to general themes identified as common to most of the submissions. These are:

- Legislative Authority
- State of Scientific Knowledge
- Establishing a Disability
- Establishing Work-Relatedness
  - Usual/Unsual Stressors
  - Predominant/Significant Contribution
  - Comparison Groups
  - Non-Work-Related Factors
- Disciplinary/Personnel Actions
- Costs
- Interim Policy
- Options
- Prevention and Treatment
- Additional Comments

The complete text of all submissions is available for public review at the Workers' Compensation Board Reference Library, located at 2 Bloor Street East, 22nd Floor, Toronto, Ontario.

II OVERVIEW OF SUBMISSIONS

As identified throughout the policy development process, the threshold question is whether there is legal authority under the Workers' Compensation Act to compensate disabilities arising from workplace stressors. The majority of respondents stated that there is legal authority to consider workplace stressor claims. While labour representatives were unanimous in this view, there was less consensus among employers. Nonetheless, most employers recognized statutory authority to consider these claims.

Given the authority to consider workplace stressor claims, the issue then arises of a means to establish work-relatedness where it is likely that more than one factor has influenced the development of a disability. While some employers suggested that this task was so formidable that no policy should be implemented, other employers recommended the requirement for an unusual workplace stressor to have made a predominant contribution to the disability. Labour representatives suggested that work-relatedness could be established using the following model: if there is evidence that a worker was exposed to a generally acknowledged workplace stressor, and there is evidence of a disability, then work-relatedness is established. This model contrasts the employers' perspective that consideration of a worker's non-work-related stressors is essential to establishing work-relatedness.

The options paper debated the categorization of workplace stressors as usual or unusual; suggesting that if claims were to be considered based on this categorization, a comparison group would be required to ascertain whether a stressor should be considered as un/usual. The paper further suggested that co-workers with the same employer may be the comparison group of choice. Labour submissions highlighted concern that this definition of usual may be unfair to some occupational groups, e.g., emergency workers, who are regularly exposed to workplace events that may be considered unusual for the average worker, but because of their regular frequency, are considered to be usual stressors for some groups of workers.

III SUBMISSION EXCERPTS

1. LEGISLATIVE AUTHORITY

Disabilities resulting from workplace stressors are compensable under the current Workers' Compensation Act.

...section 1(a)(iii) seems to adequately cover the authorisation of the WCB to formulate such policy.

Corporation of the City of Nepean

...if such disabilities are to be recognised under the Workers' Compensation Act of Ontario as it presently reads, then this must be under the rubric of 'disablement arising out of and in the course of employment'.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

...believes the proposed policy should recognise that psychological disabilities caused by chronic occupational stress are compensable under Ontario law. Compensability should follow if work relatedness is recognised as having contributed to the disability.

Ontario Legislative Committee
Canadian Railway Labour Association

We believe chronic stress claims are compensable under the Ontario WCB Act.

NOVA Corporation of Alberta

...the Act would permit such an interpretation.

Consumers Gas

We acknowledge that if consideration were ever to be granted to such a condition, the condition could only arise under the 'disablement' section of the Act. To this end, we agree and support the Board of Directors decision in Review Decision 72, which clarifies the 'chance event' and 'disablement' provisions under section 1(1) of the Act.

Employers' Advocacy Council

We have always felt that chronic stress disorders could be compensable under existing legislation...

Ontario Public Service Employees Union

The "mental-mental" situation conforms to the definition of "disablement arising out of and in the course of employment"...

Chedoke-McMaster Hospitals

The Public Service Alliance of Canada maintains the position that the current Workers' Compensation Act allows compensation for disabilities related to work stress under "disablement arising out of and in the course of employment" and that the Board should use the same adjudication process for psychological disabilities as it does for physical.

Public Service Alliance of Canada

Disabilities resulting from workplace stressors <u>are not</u> compensable under the current Workers' Compensation Act.

It would not seem to us that stress can be shown to be compensable at all under the rubric of 'disablement arising out of and in the course of employment'. The difficulty in defining the cause of a claim for stress-related illness supports our position that stress of itself should not be a compensable disablement under the Act. The very nature of stress being multifactorial in etiology, having many causes including personality, suggests that it should not be a compensable disorder under section 1(1)(a)(ii) of the Workers' Compensation Act. It could hardly be shown that the stressors in the workplace are the cause of the disability unless all other facets of the claimant's life are ruled out as contributory. Individuals deal with stressors in many varied ways and we respectfully suggest it is not the Board's mandate to judge if a job is responsible for a multifactorial subjective disorder. If it is multifactorial that in itself should preclude entitlement.

Atlas Specialty Steels

To consider a complaint of "chronic occupational stress" for compensation as an occupational "injury," stress would have to be considered to be an <u>impairment</u>, that is <u>acquired</u>, out of the individual's control, caused by occupational events, and permanent. To make the leap between the use of stress in the scientific literature towards its use as a compensable entity would involve an inappropriate application of the medical model that is inconsistent with theory, not substantiated empirically, and clinically and administratively impractical.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

Bell Canada believes that any formal entry by the WCB into the area of stress claims in the manner proposed in the options paper is a fundamental change to the WCB system, and must be reviewed by the legislature of the Province of Ontario before it is considered for implementation, even on an interim basis. It is not sufficient...to say that the Act does not currently distinguish between mental and physical disabilities. It should be admitted that at no time until recently were mental stressors even considered for compensation under this legislation. Bell Canada believes that it is preferable, rather than debating whether or not the current legislation allows such claims, to present appropriate legislation to the Ontario legislature for its consideration.

Bell Canada

If such a radical departure from the legislative intent of what constitutes a compensable accident is to be considered, it should only occur through an amendment to the Worker's Compensation Act. Such an amendment would require our legislature and the public to fully consider the impact of this expansion of the definition of compensability.

Council of Ontario Construction Associations

2. STATE OF SCIENTIFIC KNOWLEDGE

Although the volume of research is large, there are few studies in the medical literature which provide clear evidence demonstrating cause and effect.

We agree that the medical and scientific literature confirm the gaps in the current knowledge which respect the work place and the non-work place stressors and the interaction between them.

Section on Psychiatry
Ontario Medical Association

There are significant gaps in the current knowledge base with respect to workplace and non-workplace stressors and the interaction between them.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

...no clear or definitive medical or other scientific proof of a demonstrated causal relationship to the employment...Psychiatry is an inexact science with practitioners often diametrically opposed on a diagnosis given the same history.

Atlas Specialty Steels

...we would expect that Board policy should be amended from time to time as knowledge of stress disorders broadens.

Consumers Gas

We are not satisfied with the way in which the Board has shifted its opinion regarding the body of scientific knowledge concerning risk factors for occupationally related psychological disability...What the compensation system needs to do is find a mechanism for using what we do know rather than finding reasons to avoid using that information...While we do not know the exact mechanism nor the precise role stressors play-we do have ample evidence that a series of specific risk factors are significantly implicated in the causation of a range of psychological disabilities. It is unwarranted to dismiss that body of knowledge that is as extensive as that encompassed in the occupational stress literature as cavalierly as the options paper attempts to do.

Communications and Electrical Workers of Canada

The options paper also raises the issue of huge gaps in the scientific literature to support their proposition of both 'unusual stress' and predominance, and yet the original Board paper indicated sufficient scientific evidence to support compensation under the present legislation.

Ontario Federation of Labour

... a comprehensive review of the medical issues has not been attempted. We do not believe that there is enough information from a medical viewpoint as was stated in the initial discussion paper. In order to deal with the social implications of the current situation of not accepting workplace stressors as a cause of chronic stress we believe it is imperative that a clearer understanding of the medical issues be studied and presented before the political and legal issues can be addressed. The basic issue from the medical point of view is that the WCB is attempting to follow the disease cluster model and this will simply not fit the real life situation...we strongly suggest the Board delay implementation of any policy on stress until the appropriate research has been completed.

Ontario Mining Association

Bell Canada believes that the WCB attempting to enter this area of claims in the admitted absence of solid scientific research or a well known body of medical literature is not only questionable, but quite possible irresponsible of the WCB.

Bell Canada

...it has also been this company's experience that, notwithstanding the volume of research material available, there has been very little which has proved useful to assist in making a determination as to the cause and effect relationship between an alleged workplace stressor and the psychiatric disability.

Canadian Pacific Legal Services

While there appears to be some scientific study of workplace stressors...there does not appear to be any studies on the impact of either:
(1) non-work related stressors (i.e. divorce, bereavement, alcoholism, etc.)
(2) interrelationships between both positive and negative workplace and non-workplace stressors...

Employers' Advocacy Council

In our earlier submission, we noted that while there is legal precedent for compensation of stress, there is a lack of medical evidence and procedure to establish compensability. Nothing in the current discussion paper indicates any progress in establishing a medical basis. COCA recommends that..the Ontario WCB recognise that the existing medical and scientific knowledge is not currently able to provide an acceptable basis to compensate for chronic occupational stress.

Council of Ontario Construction Associations

The Employers' Council On Workers' Compensation is of the firm opinion that the state of medical understanding and knowledge is such that an objective policy on the compensability of chronic occupational stress could not be developed at this time. We oppose the Board's plan to compensate for chronic stress conditions. It is quite clear from the scientific literature that the past practice of identifying certain occupations as more stressful than others, was more intuitive than scientific. Also many studies fail to deal with the objective reality of jobs.

Employers' Council on Workers' Compensation

Because of the continued expansion of coverage allowed under the Workers' Compensation Act, the CMA has many concerns regarding the issue of "chronic occupational stress". It is an extremely complicated issue that requires much research, consultation and policy analysis before any concrete steps are taken. The Discussion Paper and the Options Paper are good starting points. However, they are only starting points, as both of these papers acknowledge the difficulties that are inherent in the issue of "chronic occupational stress". One of the major problems with policy development in this area stems from the fact that there is no clear definition for the term "stress", let alone "chronic occupational stress". If experts cannot define the term precisely, then logically it would be impossible to develop a workable policy. Such a policy would result in confusion and much inconsistency in decisions. Therefore extreme caution must be exercised by the WCB in determining how it should proceed.

The Canadian Manufacturers' Association

Current scientific literature and common knowledge support the fact that stress does not affect everybody the same way and does not affect all workers equally within an occupation or work environment.

Public Service Alliance of Canada

There is much we do not know about the etiology of stress...there is general acceptance, however, of a stress model which sees this complex psychobehavioral pattern as being multi-factorial, dynamic, and interactive. The threshold for reacting to chronic stressors with a disabling stress reaction varies from individual to individual, and changes for a given person over time.

Chedoke-McMaster Hospitals

...it appears that the level of understanding and knowledge regarding stress and its effects on workers is insufficient to adequately permit a detailed discussion of how to compensate for it...We do not question that some workplace situations will induce a level of stress. However, existing medical information may not permit us the ability to define a causal relationship that implies adverse health conditions.

Ontario Home Builders' Association

It remains the position of LTEA that the Workers' Compensation Act should not address the issue of workplace stressors at the present time until there are clearer guidelines and definitions determined by the medical profession as to what constitutes a stressor and until the Workers' Compensation Board has had time to adequately and thoroughly prepare its organisation for the adjudication of such issues. In our opinion, until both conditions exist, it would not be a functional nor constructive policy to implement...scientific research has not been able to clearly identify the causes and effects of stress. What information is available still cannot provide the needed tools for adjudication.

Lakehead Terminal Elevators Association

3. ESTABLISHING A DISABILITY

Prior to any consideration of work-relatedness, there must be evidence that a disability exists. The requirement imposed by some other jurisdictions that psychiatric reports utilise DSM-III-R diagnoses sets some standards for establishing a disability.

...concur that prior to consideration of work relatedness, there must be substantial evidence supporting the existence of a psychiatric condition which has disabled the worker from performing his regular job duties.

Regional Municipality of Ottawa-Carleton

There is no reason to limit the coverage to "psychiatric" disabilities...in some cases, it may be impossible to classify the disability as psychiatric or organic. It does not make sense in light of the chronic pain policy for this classification to be attempted in the stress policy.

Michael S. Green, Barrister and Solicitor

Determining whether a disability results from stress requires psychiatric involvement. Despite advances, psychiatry remains an inexact science...

The Skyline Ottawa Hotel

The options suggested with respect to compensability are all contingent on a psychiatric disability being evidenced. The DSM-III-R identifies numerous mental disorders and states that the cause of the majority of these disorders cannot be clearly determined. This implies that the effects of occupational and non-occupational stressors cannot be separated. As a result, the decision whether to compensate is basically subjective.

Atlas Specialty Steels

An early consultation with psychiatry is, in our opinion, a determinant issue in many of those cases. It is important to assess and differentiate psychological or psychiatric complications related to a physical or emotional stressor from the same complications precipitated by a physical or an emotional stressor but not necessarily linked to it. Once the level of symptoms has reached the stage of chronicity it is almost impossible for us to contribute in a significant way to the improvement of any condition.

Section on Psychiatry
Ontario Medical Association

...to what extent psychiatric and psychological evidence should be used in determining the cause of a stress related disability...it should be extensively utilised...Such disability must be established in accordance with guidelines in the...DSM-III-R...

Consumers Gas

We agree with the statement in the Executive Summary as to the importance of using a tool such as the DSM-III-R manual in order to identify the existence of, and to assess the severity of psychiatric disorders. However, it is important to note that the DSM-III-R manual includes a caveat that the manual was not developed for non-clinical uses such as determinations of legal responsibility, and as a general rule, it does not attempt to address the etiology of mental disorders categorised within.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

There is no conceptional or empirical support for the notion that there is an accumulative effect of prolonged exposure to a static non-traumatizing situation. In the case of mental stress claims, claims adjudication would be mostly speculative because the stimulus cannot be clearly defined and the disruption in behaviour cannot be accounted for by any quantifiable or identifiable impairment. DSM-III-R...sets out the range of diagnoses recognised by the global medical community for stress related adjustment disorders. It would be a mistake to create, for WCB purposes, an "occupational stress" claim which, by its label, would suggest that "stress" per se can "cause" disabilities which may be compensable. The wrong label can contribute substantially to the very problem the policy is intended to relieve...There is some speculation about whether a DSM-III-R condition could be viewed as an industrial disease. There is simply no evidence to support this contention...DSM-III-R stress related adjustment disorders are temporary in nature. This medical fact is consistent with the reading of the Permanent Disability section of the Act which supports entitlement for non stress-related psychological damage only...the fact that stress related conditions are not chronic and the law which gives limited recognition to only certain kinds of permanent psychological damage support the policy conclusion that benefits for DSM-III-R adjustment disorders should be time limited and should in no event go beyond six months.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

We are also concerned about the clear change in compensable health effect from a psychological stress claim, as discussed in the initial Board paper, to a clear "psychiatric disability" requiring professional psychiatric evidence and investigation of non-workplace factors in relation to the contribution made by the workplace stressors, again supporting the preference for both unusual stress and predominant contribution for a very limited number of clear psychiatric conditions.

Ontario Federation of Labour

It is interesting that in all of the options it is stated that all would require a psychiatric disability according to DSM-III-R be established. If this were the case the V 62.20 of the above DSM-III-R would be accepted as a criteria. This particular section includes job dissatisfaction and uncertainty about career choices. Clearly it could not be the fault of a particular industry when an individual makes a wrong career choice.

Ontario Mining Association

All four options require a diagnosis of psychiatric disability listed in the DSM-III-R. This presents 2 problems:

a) by waiting until the worker's stress becomes full blown, the WCB is forgetting the needs for early intervention, early compensation and, therefore, the prevention of a full blown disability. Early intervention may indeed be more cost-effective in real terms than waiting until the condition develops to its last stage.
b) by relying on psychiatric evidence, workers will face the problem of the uneven availability of psychiatrists across Ontario. Furthermore, it is a practise that will exacerbate the problem of patient confidentiality.

Toronto Injured Workers Advocacy Group/
Union of Injured Workers

Objective methods for defining, measuring and assessing "chronic stress" do not exist; thus, fair and consistent administration of compensation would be impossible...In our opinion, DSM-III-R criteria for "adjustment disorder" provide the best existing test and means for defining and diagnosing emotional response to a traumatic event and has the added advantage of not carrying the confusing and potentially debilitating characteristics of the term "stress" or "stress-related" disability. Additionally, having clear and objective diagnostic criteria to define eligibility will also avoid the ambiguity that tends to lead to confrontation and prolonged adversarial adjudication proceedings, which only aggravate the suffering of individuals and interfere with rehabilitation. Unfortunately, DSM-III-R has little more to offer in terms of standardised or objective means for identifying and evaluating presumed environmental determinants of Adjustment Disorders...the cautionary notes of DSM-III-R explicitly state (p.xxvi) that the intent of DSM-III-R is for treatment and research purposes only and not for legal categorisations...In addition, DSM-III-R cannot be used to determine cause and effect relationships for psychiatric disorders.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

...Bell Canada agrees that utilisation of DSM-III-R, and a requirement that the worker must establish a psychiatric disability according to DSM-III-R is one worthwhile minimum safeguard on the issue of the type of psychiatric disorder which is claimed by the worker to have disabled him or her.

Bell Canada

...this company endorses the view that it is essential to establish that a psychiatric disability does, in fact, exist...it would seem that the American Psychiatric Association's compendium of mental disorders DSM-III-R should be an appropriate authority to which the Board may refer in making such a determination.

Canadian Pacific Legal Services

Psychiatric evidence should not, however, be the only factor in establishing a disability. The Board should not rely on psychiatrists. Medical evidence of treatment by a primary physician should be sufficient to support a claim in most stress cases. The primary physician is apt to understand the claimant's workplace. The Board says "once a disability has been established, decisions regarding work- relatedness for psychiatric disabilities resulting from workplace stressors will always require consideration of the quality of evidence available and the amount of contribution that the workplace had on the disability." This is much too restrictive. The Board should not confuse chronic stress with psychiatric disability. How unwell does one have to become before a claim will become recognised by the Board?

Ontario Public Service Employees Union

...it appears that the Board's objective is to limit workers' access to compensation for psychological disabilities by making it more difficult to qualify for psychological disability than for physical disability. Recommending DSM-III-R in all options is an indicator of this.

Public Service Alliance of Canada

...support the use of the DSM-III-R and its eventual successors to establish that a psychiatric disability is indeed present; a DSM diagnosis should be required.

Chedoke-McMaster Hospitals

4. ESTABLISHING WORK-RELATEDNESS

Decisions regarding work-relatedness for psychiatric disabilities resulting from workplace stressors will require consideration of:

- **the quality of evidence available - whether the workplace stressor is usual/unusual**
- **the amount of contribution that the workplace had on the disability - whether a predominant/significant contribution is required**
- **comparison group(s), and**
- **non-work-related factors.**

Usual/Unusual Stressor

Usual workplace stressors include the kind of event or circumstance that may be expected to occur as part of normal daily work experience. An unusual workplace stressor is an event or circumstance that is not expected, or typical, of the workplace.

The unusual stressor approach is completely without merit. The requirement of an 'unusual' stressor can only be used as a poor excuse for denying meritorious claims.

Michael S. Green, Barrister and Solicitor

...suggest a two point attack based on the concept of usual or unusual stressors.

1) If a disability arises from an usual workplace stressor then this stressor must have made a predominant contribution. In these types of cases an investigation of the private life may be required.

2) The second case would be that the disability arises from an unusual workplace stressor which would only be considered to be a significant contribution. If the evidence of an unusual stressor can be proven then an investigation of the worker's private life should not be required.

Workers' Compensation Committee
Provincial Federation of Ontario Firefighters

...if unusual stress-significant contribution has no basis in law, it should not then be considered as a requirement to allow stress claims.

Ontario Legislative Committee
Canadian Railway Labour Association

...the condition should be related to an unusual workplace stressor to be compensable.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

...there must be something about the workplace stressors which make them unusual from the kinds of stressors in the workplace to which we are all subject. In addition, it should be apparent that those unusual stressors were really foremost in the development of the ill health condition...this is necessary if we are to achieve a meaningful separation of work and personal sources of stress.

Consumers Gas

What is considered "usual stress" for one individual can in fact be "unusual stress" for another individual and cause or contribute to a psychological disability.

Public Service Alliance of Canada

Predominant/Significant Contribution

The relative contributions of work-place and non-workplace stressors to the disability are difficult to establish.

We believe existing law does not support this approach because it imposes a different standard of proof than in adjudicating other claims. The only question that needs to be addressed is: do the particular workplace stressors make a significant contribution to the worker's disability?

Ontario Public Service Employees Union

...the workplace stressor should have played a predominant role in the development of the disability.

Regional Municipality of Ottawa-Carleton

Is there any reason to impose a higher standard of causation in stress cases than in other cases? In my view, there is not. While the work-related and non-work-related factors in stress disabilities are difficult to intertwine, this is true of many disabilities...There is no reason to impose a higher standard of causation in the stress disability case than the "significant contribution" test that applies in other cases.

Michael S. Green, Barrister and Solicitor

...in claims where we cannot reliably determine causation we must make a policy decision whether to favour compensation or not...the legal test should be to rule out all but those cases where it is evidenced that acute chance event stressors are the sole cause for the claim, and that the provoking stressor be sudden, shocking, and not enhanced by non-occupational stressors that may pre-exist the event.

Atlas Specialty Steels

..regard this as meaning that work-place stressors must have made at least as great a contribution to the development of the disabilities as the non-workplace stressors. One has to question however, as to how a cause can be regarded as 'predominant' where 50% apportionment of the causality would evidently be sufficient.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

...where in the Act do we see a requirement for a predominant contribution factor in determining entitlement...the solution offered is to change the law to suit the policy. We see it as essential that the Board recognise that the significant contributing factor test be preserved in stress claims.

Ontario Legislative Committee
Canadian Railway Labour Association

We believe the legal test applicable in adjudication should be that:
a) stress disability must be confirmed as present
b) the disability must have occurred subsequent to employment, and
c) the employee must have shown evidence of stress decompensation by degradation of performance or by having brought associated health problems to the attention of the employers or the employer's EAP or health service (if any.)

NOVA Corporation of Alberta

...appears to have been addressed to some extent in the requirement (under option 1) that the workplace stressor had to have made a predominant contribution to the disability...it appears to be the expectation of the WCB ...that there will be psychiatric evidence that can to some degree of accuracy weigh the relative effect of work and non-work related factors as contributors to the disability..In addition, the use of a test which recites "predominant contribution" as a main threshold test does not answer the concern that the WCB will still allow claims on a non-objective basis, or in other words, that the WCB will, under the guise of any given test, simply adopt a case by case approach which will lead to a multitude of appeals, and will leave no one convinced that the WCB is either fair or objective in its determination of these claims. It is submitted...that even the test of "predominant contribution" must be developed in much greater detail and be expressed with much greater precision before it is considered for adoption as a test in such cases.

Bell Canada

The Board appears predisposed to adopt a test that would be based on predominance. We feel this is wrong. We do not want to raise the threshold in determining workplace stress. We do not want any form of a predominance test. We do not need an amendment to the Act to involve or include any such test.

Ontario Public Service Employees Union

We believe that the problem of an absence of a statutory basis for an unusual stress test is equal to that opposing a predominance test...Further we believe it is possible to determine if work stressors are "significant" even in the absence of a complete comparative analysis of non-work stressors. If the exposure of a worker to the risk factors outlined in the literature can be shown and that worker has become disabled then we believe that this must be considered significant in and of itself.

Communications and Electrical Workers of Canada

Notwithstanding the problem of defining "stress", there is also no way of determining the cause of the "stress" one may be suffering from. Life is full of stressful events, and people can react very differently to the same stressful fact situation. If someone is suffering from "stress" it would be impossible to allocate cause to the workplace, or to one's personal life-style.

The Canadian Manufacturers' Association

...notwithstanding the volume of research material available, there has been very little which has proved useful to assist in making a determination as to the cause and effect relationship between an alleged workplace stressor and the psychiatric disability...a standard of "predominance" must be applied...the workplace stressors must represent, on the basis of positive objective evidence, more than half of the factors found to be the cause of psychiatric disability. Anything less can only lead to a result where compensation benefits would then become a form of health insurance which...has never been the intent of this legislation.

Canadian Pacific Legal Services

To echo the position taken by CEWC, if the exposure of a worker to the risk factors outlined in the literature can be identified and as a result the worker has become disabled then we believe that this is significant in and of itself.

Public Service Alliance of Canada

It is only fair to the employer, that a requirement for predominance of the workplace stressor be in place for consideration of claims.

Chedoke-McMaster Hospitals

A test using 'predominance' as the causative factor is a better standard; however, additional requirements would be needed:
1) Stressors from bona fide personnel activity should not be considered
2) Objective evidence, and not perceptions, must only be considered.

Employers' Council On Workers' Compensation

The changes being proposed in the options paper include notions of "predominance" and "significance" when it comes to causation of stress. How will these terms be defined?

Ontario Home Builders' Association

Comparison Group

Other jurisdictions have used three principal comparison groups to determine 'unusualness':

- **the labour market as a whole**
- **the average worker in the same occupational/industrial group**
- **co-workers in the same occupational group.**

...support the use of a comparison group comprised of co-workers in the same occupational group with same employer. The evidence should also show an unusual stressor, not present during normal work and not experienced by his co-workers.

Regional Municipality of Ottawa-Carleton

...the matter of comparison groups assessment is suggested. This is not only controversial but may not be practical or feasible. Stressors are not stressors unless they are shown to produce stress reactions in people. Such an assessment therefore would not essentially be an examination of situations or environments but an evaluation of people's reactions in these environments. This could potentially create problems or raise expectations which may have unwelcome repercussions.

Workers' Compensation Board
British Columbia

In order to determine whether a workplace stressor has caused the disability, comparisons for the purposes of evidence should be limited to co-workers in the same occupational group with the same employer.

The Skyline Ottawa Hotel

To decide if a stressor is unusual, it should be measured against workers in general...stress can be accumulative, and cause problems after years of service. Therefore, any judgement of what is unusual must be compared to what is experienced by the average person in the general workplace.

Workers' Compensation Committee
Provincial Federation of Ontario Firefighters

We do not believe that there is a need for comparisons between workers in like industries, between workers as to how the individual handles stress, but rather the 'real merits and justice' of the case, that individual's stress should be the determining factor in allowing that claim.

Ontario Legislative Committee
Canadian Railway Labour Association

Workplace stressors should be unusual measured against the workplace stressors other employees cope with in the claimant's workplace.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

Since the only logical need for a comparison group would exist in a system where an unusual stress test had been adopted and since we believe that such a test would not be supportable under existing law, we see no need to comment extensively on this item. We believe it provides evidence of a misplaced focus. The obligation in adjudicating a case before the Board is to look at the individual stress experience of the individual worker. To look at the "real justice and merits" of that situation. The focus is not to compare the stress experience of any individual worker to any other individual or group.

Communications and Electrical Workers of Canada

The adjudication of a stress claim would be a time consuming endeavour that would include extensive inquiry into the claimant's personal life. Further, the decision based on the inquiry would be entirely subjective, open to question, and without medical support or foundation.

The Canadian Manufacturers' Association

In adjudicating claims, the Board may compare co-workers in the same occupational groups with the same employer. This will preclude many of our direct care workers, our psychiatric nurses and our correctional officers from having their claims accepted.

Ontario Public Service Employees Union

The choice of comparison group may be controversial. In some instances, it may well be argued that there is no valid comparison group-that the individual performs a set of duties in a certain physical and psychological environment, which taken together preclude internal or external comparison to determine degree of "unusualness".

Chedoke-McMaster Hospitals

It is much more useful when analysing a job, when attempting to compare it to the usual or norm, to consider a number of factors, which may have some relation to stress exhibited at work. However, even their usefulness is limited to the extent that anyone could find a factor of his or her job on that list, and thereby attempt to argue that his or her own job is more stressful than the average.

Employers' Council on Workers' Compensation

Non-Work-Related Factors

Comments whether examination of a worker's non-work-related stressors is required.

... the PSAC urges the Board to seriously consider the recommendations from the labour movement, including the worker's right to privacy...

Public Service Alliance of Canada

If someone is suffering from "stress", it would be impossible to allocate cause to the workplace, or to one's personal life-style. The adjudication of a stress claim would be a time consuming endeavour that would include extensive inquiry into the claimant's personal life.

The Canadian Manufacturers' Association

...the complex etiology of stress related disabilities involve too much speculation, would involve far too much investigation and intrusion into personal lives than would be necessary, if all human beings responded to all positive and negative stressors, both work related and personal in the same manner and to the same degree.

Employers' Advocacy Council

A simple adjudicative process that neither "medicalizes" the issue nor requires an invasive personal investigation should be adopted.

Communications and Electrical Workers of Canada

...the options paper suggested...'reports relating to the psychiatric illness should comment on the relative importance of [workplace and non-workplace factors as] two sources of stressors'. This begs the question...of whether there is any psychiatrist or psychologist who can with any degree of confidence comment on this question without having done a detailed, exhaustive, and very costly investigation and assessment of the entire life of the worker concerned...

Bell Canada

...a detailed investigation of the worker's personal life is not only essential to the determination of the relative contribution of the workplace vs. other stressors, but is also an important aspect of the employer's right to appeal.

Robert C. Cronish, Q.C., & Associates
Barristers & Solicitors

Recognition that there are multiple sources of stress necessitates an investigation into the worker's personal life...

Employers' Council On Workers' Compensation

...the investigation of the worker's personal life is a necessary part of the basic psychiatric interview. The consultant will have to clarify with the patient the issue of confidentiality if he/she has to send a report to the workers' compensation board...

Ontario Medical Association
Section on Psychiatry

...it could hardly be shown that the stressors in the workplace are the cause of the disability unless all other facets of the claimant's life are ruled out as contributory...Society has been increasingly sensitive to the right of privacy of the employee. The employer has limited rights or opportunities to influence these pursuits...any determination of entitlement should take into account the findings of a detailed investigation of the worker's personal life.

Atlas Specialty Steels

...does not preclude examination of the personal life of the worker to determine the degree of occupational vs. non-occupational stresses as causation... non-occupational stresses would be more easily concealed from investigation than occupational, leading to a biased report.

Corporation of the City of Nepean

...one of the most sensitive areas in this subject, namely the intrusion into a worker's private life...it is incumbent on the compensation system to develop processes or procedures which would require the investigation and verification of non-work factors...the sensitivity of such investigations...clearly make this an unpalatable prospect...

Workers' Compensation Board of British Columbia

I agree with the conclusion that personal investigations would not be popular among workers, that these evaluations would be considered intrusive and that physicians might be hesitant to detail non-occupational stress factors in the worker's life in assessment reports for the Board.

Yukon Workers' Compensation Board

5. DISCIPLINARY/PERSONNEL ACTIONS

Should disciplinary actions such as demotions, suspensions, and dismissals, which may be expected in any workplace, be considered relevant workplace stressors?

We believe disciplinary actions should not be considered as an unusual stressor in the workplace. Personnel actions are an expected occurrence and should not be used as a basis for a claim.

Regional Municipality of Ottawa-Carleton

We would vigorously oppose any consideration of disciplinary actions as relevant stressors. In our opinion, while disciplinary actions are upsetting, they are a normal part of day-to-day work life and can in no way be described as 'unusual'. If this floodgate is opened, you will be swamped with claims and employers will be bankrupted by the corresponding increase in premium costs.

The Skyline Ottawa Hotel

...agree with the idea expressed that disciplinary actions would not be considered. However it should be noted that excessive or harassing type actions by the employer would require consideration if they could be proven.

Workers' Compensation Committee
Provincial Federation of Ontario Firefighters

...to the effect that personnel decisions should be excluded from consideration should a policy on chronic occupational stress be formulated, as these form part of every working environment and would duly impinge upon the employer's ability to manage his organisation. Further, the concept of discipline is endemic in every employment relationship, and accordingly decisions as to discipline of workers likewise should not be considered as 'unusual stressors' if they are not otherwise objectionable on human rights grounds.

Robert C. Cronish Q.C. and Associates
Barristers and Solicitors

...this area should not be given such brief review, but is a very real and major concern of employers, since this is an area in which abuse of any system of recognition of stress claims is most likely to occur.

Bell Canada

...disciplinary actions should not, per se, be considered as relevant workplace stressors. The only possible exception would be in circumstances where it is established by positive objective evidence that the disciplinary action was unfair, unwarranted and as a consequence of deliberate malicious harassment. As part of the make-up of such evidence, it would be expected that the worker has pursued all remedies available to him pursuant to the terms of his employment and has obtained a result which, directly or indirectly, confirms such harassment.

Canadian Pacific Legal Services

Personnel decisions should be exempted from consideration.

Chedoke-McMaster Hospitals

If disabilities resulting from workplace stressors are allowed, disciplinary actions such as demotions, suspensions, and dismissals should be considered as significant stressors...The law says that if disability arises out of, and in the course of, employment, that disability is compensable. OPSEU says that a disability which arises from closures, layoffs, dismissals or other government programs comes out of and in the course of employment. It must therefore be compensable.

Ontario Public Service Employees Union

The Board also supports in principle that disciplinary actions, such as demotions, suspensions, and dismissals are not likely to be considered unusual, because they can be expected to arise in any workplace. In support of that sensible position, we refer to the National Council on Compensation Insurance article entitled Emotional Stress in the Workplace, in which it is stated that if workers were allowed to use bona fide personnel actions as the basis for occupationally induced cases, it would create a new right of employees not to be terminated.

Employers' Council on Workers' Compensation

6. COSTS

It is evident that there will be some increase in both administrative and benefit costs. The amount will vary according to:

- **the approach adopted**
- **the volume and complexity of claims submitted**
- **implementation of a treatment program.**

To assist in controlling costs we must ensure a consistent thorough approach to the adjudication of these claims.

Regional Municipality of Ottawa/Carleton

...to assist in controlling costs, a consistent, thorough approach to adjudication must be ensured...

Workers' Compensation Board
British Columbia

Despite advances, psychiatry remains an inexact science and that, coupled with the fact the system gives the benefit of the doubt to workers, we have grave reservations regarding what this is going to cost.

The Skyline Ottawa Hotel

Stress has become a widespread sociological problem which is not within the control of, nor the responsibility of, the employer, and subsequently should not be at the cost of the employer. Adjudication of claims for occupational stress by any criterion will open the floodgate for speculative claims which neither the employer nor the province can afford.

Atlas Speciality Steels

...to embark upon an interim policy...is in fact tantamount to experimentation, the the cost of which would have to be borne by an already over-burdened employer class in the Province of Ontario...this reflects a cavalier and irresponsible approach to the administration of the Workers' Compensation system in the Province of Ontario. ...the Workers' Compensation Board ought to compile statistics from other jurisdictions recognising the compensability of mental-mental claims in order to gain at least some inkling as to the possible costs that may be associated with such new program.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

The right to compensation is enshrined in the Act and therefore cannot be a consideration in the Board's policy. If a worker is entitled to be compensated, then so be it, the benefits must be paid.

Ontario Legislative Committee
Canadian Railway Labour Association

There has been no attempt to cost any one of the four options presented in the options paper. The health of the accident fund requires a serious and significant attempt to cost each of the proposals for change presented. Actuarial studies should, therefore, be undertaken with respect to each scenario.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

The issue of cost was raised in the options paper from the perspective of the expense to the Board of accepting the kind of claims being discussed. We found it instructive that in light of the admission that the Board has not paid nor even really adjudicated this kind of claim in the past and that the statutory obligation to compensate victims of psychological disability has existed for some time, that there was no consideration of the cost to workers who have had legitimate claims rejected out of hand because of a "bad" policy decision. Presumably the savings of this historical undercompensation are just as difficult to compute as the amount of any future compensation that will flow from a more realistic and legal policy.

Communications and Electrical Workers of Canada

This company is..opposed to unjustified increases in costs...while recognising that some increase is inevitable, it strongly urges that the criteria discussed herein, ...be strictly applied in order to keep same at as low a level as possible.

Canadian Pacific Legal Services

...the decision to recognise 'stress' as compensable under the Act, raises in our view a radical and fundamental change to the Workers' Compensation system and its funding implications. We agree that 'stress' related problems should be addressed - but not through the workers' compensation system which is solely funded by employers and which is presently in serious financial disrepair.

Employers' Advocacy Council

We recognise that the projection of costs is extremely difficult. OPSEU...will not support any low cost option. We insist that the Workers' Compensation Act is enforced.

Ontario Public Service Employees Union

The options paper does not provide a cost impact study. We are concerned that the Board would consider adopting any such policy with no consideration of the cost burden to be placed on the employers of Ontario. The Employers' Council on Workers' Compensation has retained William M. Mercer to cost these proposals. This document will be attached to their submission...These figures (contained in the William M. Mercer Report) beg the question of whether workplace stress is such a problem that Ontario should pay $1.3 to $1.8 billion dollars out of its economy in the next ten years to provide for compensation of stress. No evidence is presented which indicates here is any need or demand for such an expensive policy.

Council of Ontario Construction Associations

...the PSAC urges the Board to seriously consider the recommendations from the labour movement...and to consider the potential cost of use and possible abuse as a minor secondary concern.

Public Service Alliance of Canada

Owing to the failure of the WCB to cost its proposals, the ECWC commissioned a study by Wm. Mercers Ltd. which establishes that compensation for chronic occupational stress will cause the average rate of assessment to increase between six and eight percent. Based on 1988 dollars, the additional cost to the system would fall between $130 and $180 million. (These estimates are speculative, and the true cost could be higher.)

Employers' Council on Workers' Compensation

WCB's unfunded liability is approaching $8 billion. This cannot continue. It is from this premise of bringing greater cost effectiveness to the provincial workers' compensation system and concerns about the practical application of compensating for stress that we want to address ourselves to your options paper...we note that while the options paper does not set forth a cost impact analysis, Wm. Mercer Ltd. (on behalf of the Employers' Council on Workers' Compensation) has undertaken such a study...These costs are going to have significant implications for retiring the WCB's unfunded liability by the year 2014 as is the WCB's goal. The question then is, are we prepared to accept these costs when the state of medical knowledge appears inadequate to ensure proper adjudication of stress claims? Such a sweeping change to compensation policy as contemplated by the options paper must receive a more thorough costing analysis before being discussed further. Moreover, all participants must be assured that the medical issues involved are well understood and the knowledge available.

Ontario Home Builders' Association

..employers have a moral responsibility to support this WCB policy. However, the employers also have to fund this policy. Incremental employer costs that result from this policy are obvious, extremely expensive even in a narrowly defined policy, and have already been brought to the attention of the Board. The concerns of the Canadian employer are credible but if they are going to have to fund this policy, then some protection and risk reduction should also be contained within the policy until such time as the expertise in this area allows for the consideration of a broader application...If the Workers' Compensation Board implements a policy that is too expensive to afford or creates unwarranted abuse that ties up resources in trying to resolve and prevent such circumstances in the future, the employers will respond by structuring their companies in a fashion that will require less people. In the worst case scenario, the Board will have provided compensation for any workplace stressor present but created considerable and permanent unemployment in the process.

Lakehead Terminal Elevators Association

7. INTERIM POLICY

A policy which provides an opportunity for incremental modification based on experience will permit the identification and compensation of workers whose psychiatric disabilities can be shown to be work-related with the greatest degree of confidence.

...we recognise the potential for re-evaluation of these criteria at a later date after the Board has accumulated an experiential data base from which to make further determinations.

Imperial Oil Limited

...support development of an interim policy incorporating incremental modifications only if the policy provides extensive guidelines to the adjudicators. Regular reviews of the policy should be scheduled to address problem areas and develop a consistent approach. If the interim policy is not concise and clearly defined the adjudication of these claims will be inconsistent and probably lead to the development of a broad, all encompassing policy.

Regional Municipality of Ottawa-Carleton

...support the recommendation that any decision to so proceed should be on an incremental basis.

Workers' Compensation Board
British Columbia

...agree that an interim policy is a good idea. Any policy developed should always be evolving and subject to change in order to better service both workers and employers.

Workers' Compensation Committee
Provincial Federation of Ontario Firefighters

In accepting that an interim policy will be adopted...we are also accepting that the Board will be making precedent decisions with each case in this area. In effect, this will directly affect future policy based upon these decisions, thus future policy will be experiential as opposed to theoretical...this would be positive.

The Corporation of the City of Nepean

The suggestion that the Board implement an interim policy, if it determines that change in its existing policy is appropriate, is a good one. The Board should plan to benefit from its experience in a new benefit entitlement area by monitoring the interim policy over a defined time period.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

The recommendation for an interim policy is supportable providing that a psychiatric disability is confirmed and that unusual stressors in the workplace are verifiable and predominate in contribution to the disability.

Fiberglas Canada

...an interim policy appears reasonable. Experience may then give rise to 'incremental modification' of this policy.

Chedoke-McMaster Hospitals

Present law permits developing a liberal system to compensate victims of workplace stress. If problems arise, then policies can be modified to deal with them.

Ontario Public Service Employees Union

The policy should not allow for incremental modification.

...to embark upon an Interim Policy granting recognition to the allowance of disability resulting from workplace stressors over time is in fact tantamount to experimentation, the cost of which would have to be borne by an already over-burdened employer class in the Province of Ontario...none of the four options presented are really reflective of a restrictive or incremental approach that would appear to be indicated in the circumstances.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

...there is reference to an interim approach, ...called an "incremental model"...Bell Canada does not believe that the Board should be experimenting in this area with actual claims and people's lives.

Bell Canada

...it is suggested that only an "Interim Policy" be established at this time..such terminology suggests some form of stop-gap measure, inadequate to meet needs which have already been recognised and acknowledged...any policy can be described as being interim when one considers the adjustments and refinements which are made as experience is garnered...by identifying the policy in this proposed fashion, it can only invite dissension and dissatisfaction which might otherwise be avoided if all parties believe it necessary to function within the parameters of the policy as set out.

Canadian Pacific Legal Services

8. OPTIONS

Option #1

Evidence of a psychiatric disability to which unusual workplace stressors have made a predominant contribution.

...support the inclusion of "unusual" and "predominant" to give the appropriate stringent focus

Imperial Oil Limited

...could be adjudicated admittedly with difficulty

Yukon Workers' Compensation Board

...we are only doing so because it would appear that the Board intends to proceed in this matter regardless of what the stakeholders have to say. Option #1 is the lesser of the four evils.

The Skyline Ottawa Hotel

The option which best addresses the health needs of the worker and the evidence requirements of the Act is Option #1...options should include confirming the existing policy of allowing stress related claims only if they result from traumatic events which arise out of and in the course of employment.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

Bell Canada has concluded that none of the four options presented are likely to result in a fair or objective determination of disabilities resulting from workplace stressors...Of the four options presented, option one is otherwise the most acceptable although Bell Canada believes that it, too, is seriously flawed.

Bell Canada

Although four options are offered for consideration, it is only the first; namely to provide compensation benefits when there is evidence of a psychiatric disability to which unusual workplace stressors have made a predominant contribution, which is acceptable.

Canadian Pacific Legal Services

...if we were able to support any option as tabled by the WCB, it would be Option #1.

Employers' Advocacy Council

...if the Board...decides to enact policy to provide compensation for workplace stress, it is the consensus of the LTEA that Option #1, that is, providing compensation benefits when there is evidence of a psychiatric disability to which unusual workplace stressors have made a predominant contribution, is the only viable option acceptable to our Association provided the medical profession is heavily involved in the adjudication process...option #1 is designed to eliminate the negative stressors, not the positive stressors and therefore can at least be supported in its intention.

Lakehead Terminal Elevators Association

...we support Option 1.

NOVA Corporation of Alberta

...the most appropriate option is the first one.

Consumers Gas

Option #2

Similar to option #1 in all respects, except that the unusual workplace stressor(s) must have made a significant contribution to the development of the disability.

We would support Option #2...

Regional Municipality of Ottawa-Carleton

Option #3

Once the psychiatric disability has been established, option #3 allows consideration of claims whether or not the stressor was unusual. Clear and convincing evidence that a workplace stressor played a predominant role in the disability would be required.

As in option #1, the workplace stressor(s) must have made at least as great a contribution to the development of the disability as the non-workplace stressor(s).

...recommend adoption of Option #3, that is, "once the psychiatric disability has been established, this option allows consideration of claims whether or not the stressor was unusual. Clear and convincing evidence would be required that a workplace stressor played a predominant role in the development of the disability"...this broader approach represents a fair balance between the employer's access to compensation and the restriction of the employer's responsibility to the areas of the workplace.

Chedoke-McMaster Hospitals

Option #4

Similar to option #3 in all respects, except that the workplace stressor(s) must have made a significant contribution to the development of the disability.

OSSTF has decided to support Option 4...a broad approach to compensating for disabilities resulting from workplace stressors should be adopted in order to include as many legitimate claims as possible.

Ontario Secondary School Teachers' Federation

..the least offensive of the options listed is #4, which would allow compensability based on usual stress-significant contribution factor.

Ontario Legislative Committee
Canadian Railway Labour Association

It would appear that the only proposed option that might be legal is option 4 (usual stress/significant contribution). However...as we pointed out in our original submission there exists a strain of legal argument relevant to our jurisdiction that would allow compensation based on the five point adjudicative model developed and presented in that submission. The options paper does not address these concerns.

Communications and Electrical Workers of Canada

...the only legal option...

Toronto Injured Workers Advocacy Group/
Union of Injured Workers

...only option #4 is legal under existing law.

Ontario Public Services Employees Union

A modified option #4 may be considered provided chronic stress is compensable if either usual or unusual circumstances "contributed in any way to the disability". We believe that the Board has an obligation to provide claimants with the benefits they are legally entitled to without discrimination. The fact that the physical or psychological disablement "arises out of and in the course of employment" is the only valid consideration when adjudicating a claim.

Public Service Alliance of Canada

Other

- **Options paper did not present a suitable option.**

It is our opinion that while the intent may be good, in practise there exists no valid or reliable method to make such determinations and that any attempt to do so will be strictly subjective and totally a function of independent practitioners with little likelihood of any significant inter-rater reliability. The stated options would force physicians to make a decision on alternatives that are equally arbitrary.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

The four options presented for discussion lack any real indication as to how they may be adjudicated. In particular, the terms "unusual", "predominant", "significant" and "workplace stressors", lack definition or clear application to our current adjudication system.

Council of Ontario Construction Associations

The issue must receive further study before any decisions are made. There is not enough information or certainty in this area for any of the four options to be adopted into workable WCB policy. Policies should assist the adjudicator and other interested parties to deal with how the Act relates to particular fact situations; they should provide certainty. Considering the lack of agreement in the medical profession in this area, such a policy would only 'enshrine' subjective speculation into what constitutes a compensable benefit. This would further weaken the worker's compensation system in Ontario.

The Canadian Manufacturers' Association

- **Recommendations/Comments on Options**

...the four options proposed are broad and sweeping and devoid of technical detail in terms of how such an adjudication system would be operated...regard should be had in advance as to how the adjudication system will be administered. We trust that the Workers' Compensation Board will choose to set out the strictest requirements possible given the nature of the type of disability which is under discussion.

Robert C. Cronish, Q.C., and Associates
Barristers and Solicitors

...the correct standard for the determination of compensation in these cases is as follows: "there must be a disability to which workplace stressors have made a significant contribution"

Michael S. Green, Barrister and Solicitor

...as a first step...use a combination of all the various requirements listed in the options initially as a prerequisite for acceptance. In other words a worker would have to show there were unusual circumstances...unusual for that job...both significant and predominant at the outset of his condition...supported by clear and convincing evidence. Initially...also require evidence to clearly show that non-work related factors have either no causative effect or at the most only minimum impact in the development of the condition.

Workers' Compensation Board
British Columbia

The first and most comprehensive option listed...wherein compensation is deemed appropriate with psychiatric evidence of disablement when...unusual workplace stressors have made a predominant contribution...leaves terms such as "unusual" and "predominant" to interpretation.

Atlas Specialty Steels

Compensation benefits could be provided when there is evidence of a psychiatric disability to which unusual workplace stressors have made a predominant contribution.

1) This would ensure that the stressor has more effect on the individual than his co-workers due to its 'unusual' nature.
2) Because of the 'predominant' nature of the contribution of the stressor, it allows a threshold to be placed upon the level of the stressor.
3) Depending on the level of the threshold, a 'significant' could be substituted for 'predominant' in certain situations.

Corporation of the City of Nepean

We do not believe that the options paper has presented any argument for abandoning our original position that chronic occupational stress be compensated under the present Act, and that the recognition of stressors in the workplace, established in the scientific literature, form the basis on which to judge whether or not any worker has been exposed to 'usual' stress and that 'unusual' stress was a significant contribution to their psychological stress claim. Any other option flies in the face of the legislation or policy concerning other claims, which has never required unusual exposure to a risk or predominant contribution.

The Ontario Federation of Labour wishes to endorse the brief submitted on this issue by the Communications and Electrical Workers of Canada and urges the Board to give proper consideration to their and our original brief in support of compensating chronic occupational stress.

Ontario Federation of Labour

We recommend that the Workers' Compensation Board continue to compensate such claims under its existing policy: Directive 22: The Adjudication of Claims for Psychotraumatic Disability, and refer the matter to the joint attention of the Ministry of Labour, Health, and Industry and Trade to decide how society should both compensate if any, citizens suffering from everyday stress and develop strategies for stress prevention.

Employers' Advocacy Council

It is the ECWC's submission that the only test that begins to address "work-relatedness" is one that contains the following conditions:

1) the causative factor between work stressors and disability must be predominance,
2) work stressors must predominate over personal stressors and pre-existing conditions together,
3) bona fide personnel actions should not be considered as work stressors in the application of the test,
4) a worker's perception of work stressors which in fact do not objectively exist should not be considered.

The Employers' Council on Workers' Compensation

9. PREVENTION AND TREATMENT

There is concern that the provision of compensation may have an adverse effect on a worker's health and recovery. Considering that the preferred treatment for illness resulting from workplace stressors may be participation in work and other social activities, the provision of compensation may entrench a worker's perception of being disabled, inadvertently prolonging recovery.

...we request that the Workers' Compensation Board consider recognising, by means of financial credits those companies which have or plan to provide employee assistance programs, possibly through the Workwell Program. It is in the Board's own interest to consider recognition of these services which we believe have a positive impact on employees and their health.

Imperial Oil Limited

...would support the Board in assuming a more active role in the worker's treatment program...the Board, along with the employer, should become an active participant in developing a treatment program. The Board should closely monitor the worker's progress and referrals to ensure that the optimum treatment course is undertaken. At present, the employer has very limited control over the treatment process and the Board typically does not monitor treatment closely and rarely makes suggestions. We would suggest that employer's input/concerns regarding treatment, or the lack thereof, be recognised and request that the Board assume an active role in monitoring the medical management of a claim.

Regional Municipality of Ottawa-Carleton

...there is a brief discussion as to the need for active treatment programs in such cases, followed by a statement that the Board expects to develop such treatment programs to ensure that they are available to its clients...such treatment programs must be much more fully investigated and reviewed to determine their efficacy before policy in this area is finalised.

Bell Canada

The establishment of an active treatment program would appear to be a worthy objective notwithstanding...that the providing of compensation may, of itself, lessen the worker's own perception of his worth and thereby prolong the period for his recovery.

Canadian Pacific Legal Services

The proposal that "an active treatment program be required in all of these cases" will not in our opinion adequately address this issue. In fact such well-intended <u>treatment</u> will likely only prove to be an additional and significant source of cost since the compensation policies will have undermined the likelihood that such treatment would be effective; that is <u>curative</u>.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

...we are disturbed that the harmful health implications of labelling and providing permanent or prolonged compensation for any difficulty or problem under the label of "stress" or "disabilities" resulting from workplace stressors (a feature common to all options) do not appear to have been given serious attention or consideration and have not been addressed adequately in the options paper. Simply stated, all of the proposed options will make temporary disabilities permanent. Providing compensation in the manner stated for all of the options will create unnecessary and prolonged invalidism, and undermine all therapeutic efforts and make rehabilitation virtually ineffectual...These policies will not only prolong disability, they will create it.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

...many companies, sensitive to such personal issues provide services ranging from support and counselling to formal Employee Assistance Programs. The Conference Board of Canada acknowledges the importance of recognising non-work related family stressors in 3 articles in Canadian Business Review (Volume 16, Number 3, Autumn 1989)...These articles bring to the attention of the reader the fact that the intensity of many personal stressors at home may far outweigh the totality of any workplace stressors.

Employers' Advocacy Council

We support in principle the idea of stress management programs, available to WCB clients. We want the Board to recognise the need for preventative programs for high risk occupational groups targeted as potential stress claimants.

Ontario Public Service Employees Union

There is no substitute for preventative management of stress conditions whether their origins are domestic, occupational, or as is most common, a combination of these. Stress reactions are best identified and dealt with before they become chronic and/or disabling. Given the complexities of adjudicating chronic 'mental-mental' claims, there should be strong incentive on all sides for emphasising the preventative approach - before the potentially adversarial phase is reached...recommend that the WCB consider implementing such a system of premium relief for those participating employers against whom such claims are made and who have a formally established and quality insured Employee Assistance Program.

Chedoke-McMaster Hospitals

The options paper states that treatment such as stress management programs are difficult to find. Given the unique problems posed by stress induced "injuries" it may be difficult to develop, in the short term, adequate rehabilitation programs of the scale which may be required.

Ontario Home Builders' Association

10. ADDITIONAL COMMENTS

To assist in a consistent direction, perhaps a panel could be set up to complement the adjudication process in rendering a final decision.

Regional Municipality of Ottawa-Carleton

...criteria for determining the job stress-chronic stress relationship should be developed by a panel of psychiatrists and psychologists who have experience with assessing and treating occupational stress disorders and who understand the distinction between the benefits received under WCB and those of a benefits plan for non-work related health problems.

NOVA Corporation of Alberta

Eligibility criteria must include an indisputable relationship between the stressors and the subsequent disability and ensure a degree of restrictiveness in order to control the volume of claims and associated costs.

Fiberglas Canada

...there are at least two amendments to the Act which should be considered. One amendment should address 'predominant cause' in dealing with the amount of contribution the workplace is required to make under the Act. A second amendment should exclude employee reactions to management decisions which change the employee's circumstances at work.

Stelco/Hicks, Morley, Hamilton, Stewart, Storie
Barristers and Solicitors

Claims for compensation for real or psychogenic illness under the Board's broadening definition of accident or injury leads us to believe that once claimed workplace stressors are accepted for benefits under even the most stringent of guidelines, the guidelines and Board policy will become more liberal and will gradually encompass more lenient interpretation of a work relationship. We have further concerns that stress claims will become more commonplace, once the Board's position on compensability for stress is defined. Since many of the symptoms of health problems related to stress are subjective, adjudication becomes a matter that will inevitably proceed through the entire appeals process, with each level providing the claimant with more information as to what is needed to gain a favourable decision at WCAT. This will provide most costly for - and weighted against - the employer, and the public purse.

Atlas Specialty Steels

The Association clearly feels the most stringent, narrowly defined policy on compensable workplace stressors is the prudent direction to proceed if proceed we must...The system in place...works in its current structure so it naturally begs the question of "why fix something that works"? The Association would once again ask the Board to reconsider whether the issue needs to be addressed at all.

Lakehead Terminal Elevators Association

- We believe that psychological disabilities caused by chronic occupational stress are compensable under Ontario law.
- The most appropriate test would recognise the disability if the workplace contributed in any way to the disability.
- A simple adjudicative process that neither "medicalizes" the issue or requires an invasive personal investigation should be adopted.

Communications and Electrical Workers of Canada

...we believe that it is possible to develop a more rational, systematic, and humane approach to these issues and that there exists a body of interdisciplinary knowledge and expertise for doing so. This would not necessarily be a simple task and would take time. However, we hope that the political pressures for expediency do not result in a lost opportunity to develop a progressive, fair and truly effective policy that will avoid the detrimental features of the policies currently under consideration.

Behavioural Medicine Unit
St. Joseph's Hospital-McMaster University

...Bell Canada repeats its belief that WCB intervention in the area of stress or "mental-mental" claims is neither necessary nor desirable...Bell Canada does not believe that the current Options Paper presents the WCB with satisfactory or realistic options for consideration, and the WCB should embark upon much greater study and investigation in this area before it chooses to make its policy.

Bell Canada

...the CMA has many concerns regarding the issue of 'chronic occupational stress'. It is an extremely complicated issue that requires much research, consultation and policy analysis before any concrete steps are taken. The Discussion Paper and the Options Paper are good starting points. However, they are only starting points, as both of these papers acknowledge the difficulties that are inherent in the issue of chronic occupational stress. One of the major problems with policy development in this area stems from the fact that there is no clear definition for the term 'stress', let alone 'chronic occupational stress'. If experts cannot define the term precisely, then logically it would be impossible to develop a workable policy. Such a policy would result in confusion and much inconsistency in decisions. Therefore extreme caution must be exercised by the WCB in determining how it should proceed.

The Canadian Manufacturers' Association

The ECWC reiterates its position that the government, not the Board, should be the initiator of any future investigation of possible compensation for chronic occupational stress. A very restrictive policy, based on a high standard of work-relatedness, does not answer our main concern about inadequate medical knowledge being a very soft basis for proceeding further. There is a great danger that the job becomes a convenient hook upon which to hang all of one's troubles. If those responsible for WCB allow this to happen, they will be setting the system on a course of self-destruction.

Employers' Council On Workers' Compensation

We continue to believe that:

a) psychological disabilities caused by chronic occupational stress are compensable under Ontario Law.
b) the most appropriate test would recognise the disability if the workplace contributed in any way to the disability.
c) a simple adjudicative process that neither "medicalizes" the issue nor requires an unusual personal investigation should be adopted.

Ontario Public Service Employees Union

COCA recommends that:

1. The Ontario WCB recognise that existing medical and scientific knowledge is not currently able to provide an acceptable basis to compensate for chronic occupational stress.
2. That the Minister of Labour be advised that the WCB believes that compensation for occupational stress can only be established through an amendment to the Workers' Compensation Act.
3. That the Board adopt a procedure of establishing a cost benefit analysis of major proposals when developing or amending existing Board policy. The analysis should establish benefits and need for the proposed policy, establish cost and projected growth of costs, and then make recommendations based on these.

Council of Ontario Construction Associations

The issue is to develop a mechanism which does not rob the workers of their acquired but often denied rights.

Public Service Alliance of Canada

.. the seriousness of this issue deserves the attention of our elected representatives and indeed should be looked at within the framework of legislative change.

Ontario Home Builders' Association

RESPONDENTS

Atlas Specialty Steels
Behavioral Medicine Unit, St. Joseph's Hospital-McMaster University
Bell Canada
Canadian Pacific Legal Services
Chedoke-McMaster Hospitals
Communications And Electrical Workers of Canada
Consumers Gas
Corporation of the City of Nepean
Council of Ontario Construction Associations
Employers' Council On Workers' Compensation
Employers' Advocacy Council
Fiberglas Canada Incorporated
Imperial Oil Limited
Lakehead Terminal Elevators Association
Michael S. Green, Barrister & Solicitor
NOVA Corporation of Alberta
Ontario Federation of Labour
Ontario Home Builders' Association
Ontario Legislative Committee-Canadian Railway Labour Association
Ontario Mining Association
Ontario Public Service Employees Union
Ontario Secondary School Teachers' Federation
Public Service Alliance of Canada
Regional Municipality of Ottawa-Carleton
Robert C. Cronish, Q.C., & Associates, Barristers & Solicitors
Section on Psychiatry, Ontario Medical Association
Stelco/Hicks, Morley, Hamilton, Stewart, Storie, Barristers & Solicitors
The Canadian Manufacturers' Association
The Skyline Ottawa Hotel
Toronto Injured Workers' Advocacy Group / The Union Of Injured Workers
Workers' Compensation Board of British Columbia
Workers' Compensation Committee-Provincial Federation of Ontario Firefighters
Yukon Workers' Compensation Board